

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SHAWN DRUMGOLD,)	C.A. NO. 04-11193NG
Plaintiff)	
)	
v)	
)	
TIMOTHY CALLAHAN, ET AL.)	
Defendant(s))	
)	

Motion to Amend Complaint

Now comes the Plaintiff in the above-entitled matter moves the court to allow him to amend his Complaint. Attached hereto as Exhibit 1 is a copy of the proposed Amended Complaint. In support thereof the Plaintiff says;

1. The Amendment makes two changes in the Complaint. First, the Defendant, Francis M. Roache is properly named in the Complaint and second “Patricia Murphy as Executrix of the Estate of Paul Murphy” replaces “Paul Murphy” as a Defendant in the case.
2. The original Complaint erroneously named Defendant Roache as “Micky” Roach. The amended complaint corrects that mistake.
3. Patricia Murphy, in her Motion for Summary Judgment, has indicated that she is the Executrix of the Estate of Paul Murphy and that Paul Murphy died on January 4, 2001.

4. Patricia Murphy has answered the Complaint in this case and has had attorney William White, Esq. represent her throughout the over thirty depositions in this case. In addition, Mr. White has filed a detailed Summary Judgment in this matter.
5. Ms. Murphy has never filed a suggestion of death under Fed. Rules of Civ. Proc. 25(a).
6. Ms. Murphy will not be prejudiced by the allowance of this amendment since she has been actively involved in this litigation from its beginning.
7. The Amendment to the Complaint is consistent with Mass General Laws Ch. 97 § 10 which authorizes a claim to be brought against an estate more than one year after the death of the decedent under appropriate circumstances (see Plaintiff's Memorandum of Law in Opposition to Richard Walsh and Paul Murphy's Motion for Summary Judgment Section C 2, p. 12).
8. Leave should be freely given to Amend a Complaint when justice so requires (Fed R Civ Proc 15(a)). In this case it is appropriate for the court to allow the Plaintiff to amend his Complaint for the reasons outlined above.

Wherefore the Defendant moves this court to allow him to amend his complaint in the above-entitled matter.

Respectfully submitted,

By His Attorneys,

/s/ Michael Reilly

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